

# Tree Ordinance

## Sec. 21-0. Preamble.

The purpose of this ordinance [Chapter 21 of this Code] is to recognize the valuable asset the City of Durham has in the trees and shrubs that have been planted by the city over the years and to encourage the protection of trees and shrubs along streets and on city grounds, because they are a continuing asset to the sound development of the city.

To accomplish this purpose, this ordinance [chapter]:

- (1) Establishes standard procedures and practices for the treatment of trees on city property, when conditions require that they be pruned or removed, and of trees on private property, when city crews are required to correct or abate certain conditions set out in this ordinance [chapter];
- (2) Defines those situations in which trees growing on private property constitute a public nuisance; and
- (3) Encourages the planting of trees and shrubs on city property in conformity with an approved plan.

This ordinance [chapter] is not intended to be punitive or to cause hardship to any person who uses care and diligence to protect trees on city property. (Ord. No. 5922, preamble, 4-19-82)

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\*Editor's note-Section 1 of Ord. No. 5922, adopted April 19, 1982, repealed in its entirety Ch. 23 of the 1964 Code, which had been included in this code as Ch.21, xx 21-1 -- 21-26, and enacted a new chapter in lieu thereof, designed herein as x x 21-1 - 21-17. Section 21-0 of this chapter, derived from the preamble of said Ord. 5922, has been codified at the instruction of the city; designation as x21-0 was at the editor's discretion.

Cross references-Planting and removal of trees and shrubs, etc. in city cemeteries x 7-21; removal of trees or shrubs in city cemeteries when detrimental to adjacent lots, etc., x 7-23; disposition of tree and shrub trimmings generally, x 10-55; disposition of large tree and shrub trimmings, etc. x 10-56; duty of tree surgeons, etc., with reference to refuse from their work, x 13-70; tree limbs, etc., projecting into or overhanging sidewalk, etc., generally, x 18-19 et seq.: visibility at intersections, x 24-5, A:3.

## Sec. 21-1 Definitions.

Unless a different meaning clearly appears from the context, the following words and terms, whenever used or referred to in this chapter, shall have the meaning respectively ascribed to them by this section:

1. **Agent:** A person authorized by another to act for him, one entrusted with another's business. Agency may be based on fact or pursuant to written agreement.
2. **City Manager:** The city manager of the City of Durham and any other officer or agent of the city

to whom the city manager has delegated any function or power bestowed upon him by this chapter.

3. **City Tree:** A tree (see definition of “tree” set out in this section) located on city property or right-of-way or planted by the city on private property pursuant to and for the duration of an agreement between the city and private property owner.
4. **Drip line:** The circumferential line on the horizontal ground plane perpendicular to a tree’s outer branching extremities.
5. **Owner:** The person in whom is vested the ownership, dominion or title of property, including each joint or common owner, or life tenant, as determined from the public records of Durham County.
6. **Person:** Any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or any other legal entity however designated.
7. **Public utility company:** A railroad company, pipeline company, gas company, electric power company, telephone company or any other company that performs a public service and is regulated as such by a public authority such as the North Carolina Utilities Commission or the city as franchiser.
8. **Shrub:** A self-supporting multistemmed woody plant, generally achieving an average maximum height of twelve (12) feet in the environs of the city.
9. **Sight Distance:** The distance required for nearly all drivers to perceive and properly respond to traffic conditions or control devices.
10. **Topping:** The severe cutting back of the limbs to stubs larger than (3) inches in diameter within the tree’s crown so as to remove normal canopy and disfigure trees.
11. **Tree:** A self-supporting woody plant having a well-defined stem or trunk, or the capability of having a single stem through trained growth, a more or less definite crown, a height maturity of at least eight (8) feet in the environs of the city, and a trunk caliber at maturity of (5) inches or greater at a height of (6) inches above the ground.
12. **Tree committee:** A body appointed by the mayor to study the problems and needs of the city’s urban forestry program and to make recommendations to the city council related to these problems and needs; and to assist in dissemination of news and information about tree planting, protection, and maintenance to the general public.
13. **Tree planting and maintenance specifications and standards:** criteria adopted by the city manager to govern the planting designs, selection, locations and methods; pruning, removal, fertilization, spraying, bracing and protection of city trees. (Ord. No.5922, x 1, 4-19-82)

## **Sec 21-2 Public nuisances on private property.**

- (a) **Duty of Property Owner:** The owner or agent of the owner of any real property bordering on any street and upon whose property there are trees shall maintain those trees so that they do not interfere with or endanger the use of the public streets; interfere with or obstruct illumination of the street lights; obscure sight distance or create a traffic hazard; interfere with the visibility of any traffic-control device or sign; obstruct or impair the free passage of pedestrians on sidewalks; project into or overhanging city sidewalks or other city rights-of-way at a vertical clearance of less than seven (7) feet; or endanger

the life, health , safety or property of the public.

(b) **Declaration of Public Nuisance:** The city manager may declare that any obstruction or interference identified in this section is a public nuisance. When the city manager so declares, he shall notify the owner or agent of the owner by certified mail (return receipt requested) of the existence of the nuisances shall allow a specified period of time of thirty (30) days or less in which to correct or to remove the nuisance. If the owner or agent of the owner does not correct or remove the nuisance within the specified period of time after receipt of notice, the city manager may enter upon the property to correct or remove the nuisance. The city shall perform all corrective maintenance according to the tree planting and maintenance specification and standard.

(c) **Cost of Correction:** Violation of this section shall subject the property owner to a civil penalty based on the cost of correction or the removal of the nuisance and to be recovered by the city in a civil action in the nature of debt if the property owner does not pay the penalty within thirty (30) days after he has been cited for violation of this section and demand for payment has been made by the city manager. (Ord. No.5922, x 1, 4-19-82)

### **Sec. 21-3 Transmissible disease infections and insect infestations of trees on private property.**

a. **Authority of City Manager.** The city manager may order that the property owner or agent of the owner of any of tree(s) located on private property, infected by transmissible disease or infested with insects, and located proximate to any city tree(s), treat or allow the city to treat the infected or infested tree(s), located on private property. The city manager shall determine proximity based on the type of disease infection or insect infestation and its likelihood of spread to trees. The city manager shall have the authority to enter upon private lands to make field inspections, including the removal of specimens for any laboratory analysis that may be necessary to determine the presence of a transmissible infection or infestation.

b. **Issuance of Order.** When the city manager determines that an infectious disease or insect infestation is present, he shall assess the need for drastic action to curb the spread of infection or infestation to city trees. If the infection or infestation warrants drastic action to prevent spread to city trees, the city manager shall order the property owner to immediately remove and dispose of the infected or infested tree, or allow the city to do so. If the infection or infestation does not warrant drastic action, the city manager may order that the property owner or agent of the owner treat, or remove and dispose of the infected or infested trees within a specified time, but not less than ten (10) days. The city manager's order shall be issued by certified mail (return receipt requested). If the owner or agent of the owner does not satisfactorily complete the necessary work within the time allowed by the city manager's order, the city manager may enter upon the property to treat, to remove, or to destroy the infected or infested tree(s) by approved practice.

c. **Cost of Correction.** Violation of this section shall subject the property owner to a civil penalty based on the cost of any tree removal or other corrective treatment unless the city manager determines that the disease infection or insect infestation originated on the adjacent property. Any civil penalty so assessed shall be recovered by the city in a civil action nature of debt if the property owner does not pay the penalty within thirty (30) days after he has been cited for violation of this section and demand for payment has been made by the city manager. . (Ord. No.5922, x 1, 4-19-82)

### **Sec. 21-4. Tree planting by the city on private property adjacent to street right-of-way.**

Along any street where the existing right-of-way is not wide enough to accommodate trees, the city, with the consent of the owner(s) of property(ies) adjacent to that street, may enter into a temporary easement agreement with the property owner(s) to permit the city to plant trees within the easement. The easement shall abut the property line that divides the street right-of-way from private property. The easement shall not be more than fifteen (15) feet wide. The city shall maintain the trees planted within the easement for a maximum period of five (5) years as specified in each agreement. The city shall not plant trees on easement where their placement will interfere with travel on public streets or endanger the use of those streets by the public, as described in section 23-2. The city shall follow the tree planting and maintenance specifications and standards in all planting on easements. If, at a later date, the city acquires, by purchase or condemnation, the land upon which trees were planted by the city pursuant to a temporary easement agreement, the city shall not be required to compensate the property owner for these trees. (Ord. No.5922, x 1, 4-19-82)

#### **Sec. 21-5. Permits required for work or activity affecting city trees.**

a. **Permit Required.** No person shall perform or undertake, or cause to be performed or undertaken, any work or activity governed by an included this chapter on any city property without first filing an application with and obtaining a permit from the city manager. The city and public utility companies are eligible for a master permit as described in section 21-12 (in lieu of individual permits) for jobs requiring tree maintenance or excavation affecting city trees.

b. **Standard for review.** Application for permits must be made at the office of the city manager not less than forty-eight (48) hours prior to the time the work is to be done. The city manager shall issue the permit provided for herein when he determines that the proposed work or activity is consistent with the city's interest in city trees and the proposed method and workmanship are consistent with the tree planting and maintenance specifications and standards.

c. **Scope of Permit.** Each permit shall include a description of the location and nature of the work or other activity authorized by it. The permit holder shall perform all work in strict accordance with the tree planting and maintenance specifications and standards. The permit shall bear a definite date of expiration, and the work shall be completed within the time allowed by the permit and in the manner described therein, the permit holder shall notify the city manager that the project has been completed no later than five (5) days after project completion. The city manager may require inspection of the site upon completion of the project.

#### **Sec. 21-6 Planting; permit required; conditions.**

a. **Permit required.** No person shall plant any tree or shrub on city property without first filing an application with and obtaining a permit from the city manager. The application required herein shall state the number of trees or shrubs to be planted; the location, grade, size, species, cultivar or variety of each tree or shrub; and such other information as the city manager shall find reasonably necessary to a thorough review of the application. All tree planting must conform to the master tree planting plan. The city manager may cause the removal of any tree(s) or shrubs(s) that is planted in conflict with the provisions of this section. When the person who planted the tree(s) or shrub(s) can be identified, the city manager shall notify him of the violation of this chapter and shall order him to remove the tree(s) or shrub(s) and to restore the site to its condition before the tree(s) or shrub(s) was planted within ten (10) days. If the tree(s) or shrub(s) has not been removed after ten (10) days, the city manager shall remove the tree(s) or shrub(s).

**b. Planting Plans Required.** Any person desiring to plant more than twenty-five (25) trees or shrubs on any city property shall, in addition to applying for a permit, submit a planting plan or written statement to the city manager. The city manager shall review and approve the statement or plan before issuing a permit to plant. All planting plans shall show accurately:

1. The proposed or existing street right-of-way width; the subdivision of pavement, curb and gutter within the street right-of-way; distance from face of curb to property line; and location of sidewalk. All plans shall be drawn to a definite, indicated scale.
2. The proposed location of each new tree and shrub and the location of each existing tree shrub within the proposed street line. The location of each proposed or existing tree and shrub shall be shown in scaled relation to the other features of the plan.
3. The species, cultivar or variety of each tree and shrub proposed to be planted and of those already existing within the proposed street lines, either indicated on the plans or referenced with a number to a key list.
4. The distance (in feet) between tree and shrubs in any one row.
5. The nature of the soil in the planting space to a depth of two (2) feet, and any existing or proposed surface or subsoil drainage system.

All the statements filed in lieu of a planting plan shall contain the same information as required on the plan. (Ord. No.5922, x 1, 4-19-82)

**Sec 21-7. Maintenance; permit required; conditions.**

**a. Permit Required.** No person shall spray, fertilize, preserve, prune, brace, perform surgery on, treat for disease infection or insect infestation, cut any branch or root, or otherwise disturb any city tree without first obtaining a permit from the city manager. The application required herein shall state the and kinds of trees to be maintained, the kind of treatment and method of workmanship to be administered, the composition of the material to be applied, and other information as the city manager shall find reasonably necessary to a thorough review of the application.

**b. Topping Not Allowed.** No person shall top any city tree. The city manager may exempt an applicant from the requirement of this subsection upon finding that the tree has been severely damaged by storm or other causes or is under utility wires, and other pruning practices are impractical. (Refer to section 21-15)(Ord. No.5922, x 1, 4-19-82)

**Sec. 21-8 Removal and replacement; permit required; conditions.**

No person shall remove a city tree without first obtaining a permit from the city manager. As a condition to any permit for the removal of any city tree, the city manager may require that the permit holder pay a fee of not more than one hundred dollars (\$100.00) for each tree to be removed for the city to plant a designated species of tree(s) as nearly equivalent in size and value as reasonably possible in place of the one(s) removed. (Ord. No.5922, x 1, 4-19-82)

**Sec. 21-9 Construction affecting the condition of trees.**

- a. **Permit required.** No person shall change grade by cut or fill; excavate any ditches, tunnels or trenches; bore beneath ground surface; or lay any driveway within a distance (in feet) from a city tree that is equal to or less than the diameter (in inches) of the trunk of the city tree as measured at four and one-half (4 ½) feet from the ground without first obtaining a permit from the city manager. (Example: City tree trunk diameter=8", proscribed area = 8' or closer to city tree.) The application for a permit shall include a construction plan.
- b. **Conditions Attached.** As condition of the permit required by this section, the city manager may require that the applicant remove any tree that the city manager determines will not survive the proposed grading change, excavation or boring. When a condition of the permit requires that a tree be removed, the city manager may also require that the permit holder pay a fee of not more than one hundred dollars (\$100.00) per tree for the city to plant a designated species of tree(s) to replace the tree(s) required to be removed. The city manager may require that the replacement tree be planted at the original removal site at some alternative site located proximate to the original site. The tree planting and maintenance specifications and standards shall be followed for any city that is planted or removed. As a condition of the permit, the city manager may require that any city adjacent to private property on which any excavation or construction of any building or structure is taking place surrounded with a substantial fence, frame or box. The fence, frame or box shall measure, at most four (4) feet high and shall be placed at a distance no closer to the tree trunk than halfway between the trunk and the drip line of the tree's crown. All equipment, building material (e.g. stone, brick, sand, concrete, etc., dirt, or debris shall be kept outside the barrier.
- c. **City Personnel Available.** The city manager shall make available upon request the services of the appropriate city personnel to consult on methods of protecting and planting trees on city property. (Ord. No.5922, x 1, 4-19-82)

**Sec. 21-10. Placing materials on city property; permit required; conditions.**

No person shall deposit, place, store or maintain upon any city property any stone, brick, sand, concrete, or other materials, which may impede the free passage of water, air, fertilizer to the roots of any city tree, except by written permission of the city manager. (Ord. No.5922, x 1, 4-19-82)

**Sec. 21-11. Building relocation; permit required; conditions.**

No person shall remove a building or other large object which is reasonably likely to injure any city tree or part(s) thereof without first obtaining a permit from the city manager. Whenever a city tree must be transplanted to avoid injury or damage due to the relocation of any building or structure or other cause, the city shall transplant the city tree. (See section 23-8 when tree removal is required.) (Ord. No.5922, x 1, 4-19-82)

**Sec. 21-12 Public utility companies; master permit; conditions.**

The city and public utility companies are not required to obtain individual job permits to perform necessary tree maintenance or excavation affecting city trees but may instead obtain a master from the city manager. No master permit shall be valid for a period greater than one (1) year from the date of issuance. The permit authorizing such trimming or other operations affecting a city tree shall be limited to the minimum trimming or other operations affecting a city tree that will allow the installation and maintenance of the public utility company lines. The city manager and the public utility company shall jointly determine the extent of trimming or other operations affecting a city tree that will be

necessary to facilitate the functions of the public utility company; however, the city manager shall have the ultimate authority as to the final determination.

In addition to acquiring a master permit, the city and any public utility company shall notify the city manager prior to performing any work that will affect a city tree(s). Such work shall be done in a neat and professional manner and in accordance with the tree planting and maintenance specifications and standards and any additional specifications outlined by the city manager. The city manager may inspect all work done pursuant to a master permit. (Ord. No.5922, x 1, 4-19-82)

### **Sec. 21-13 Parking or maintaining vehicles on city property.**

No person shall drive, park, haul, store or maintain any automobile, truck, trailer, boat, motorcycle, snowmobile, motor home or other motorized wheeled vehicle on city property within twenty-five (25) feet of any tree(s) except while within the clearly delineated travel or parking zones of any roadway, alley, driveway cut or parking lot without first obtaining a permit from the city manager. This provision does not preclude parking on any publicly installed or maintained gravel, concrete, or bituminous driveway or entryway, or operating a motor vehicle on any gravel surfaced roadway within twenty-five (25) feet of a city tree(s). (Ord. No.5922, x 1, 4-19-82)

### **Sec. 21-14. Abuse and mutilation of city trees.**

Unless specifically authorized by the city manager, no person shall:

1. Damage, cut, carve, break, or transplant or remove, climb with spikes, kill or cause to be killed any city tree; or
2. Cut, disturb or interfere in any way with the root within the drip line of the tree crown of any city tree, including the changing of existing grade by cut or fill; or
3. Attach any rope, wire, nails, signs, advertising posters or other device to, around or through any city tree; or
4. Place, spray or allow any solid, liquid or gaseous substance which the person or agent of the person placing, spraying or otherwise allowing such substance to come in contact with any city tree(s) knows or should have known would reasonably likely be harmful to any city tree(s); or
5. Remove or damage any guard devices placed to protect any city tree(s); or
6. Raze, remove or renovate any structure so as to damage any city tree(s); or
7. Set fire or permit any fire to burn when the fire or its heat is likely to injure any portion of any city tree(s). (Refer to the Fire Prevention Code (section 9.20 et seq.) of the city; or
8. Maintain any device within such proximity as is likely to vaporize noxious fumes that are deleterious to the condition of any city tree. (Ord. No.5922, x 1, 4-19-82)

### **Sec. 21-16. Violation and penalty.**

No person shall fail, neglect or refuse to comply with an order or notice of violation from the city manager or with the provisions of this chapter.

Any person who shall violate or fail to comply with any provision of this chapter or any notice or order

issued by the city manager pursuant to this chapter shall, upon conviction, be fined the sum of twenty dollars (\$20.00) for each violation of this chapter. Each day the violation continues may be charged as a separate offense.

The provision of this chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

The remedies and penalties established by this section are in addition to the specific remedies and penalties established by other sections of this chapter. The remedies and penalties established by this section may be applied in combination with the remedies and penalties of other sections of this chapter or with each other. (Ord. No.5922, x 1, 4-19-82)

## **Sec. 21-17. Appeals**

a. **Appeal to City Manager.** Not later than ten (10) city working days after notice of the decision, any person dissatisfied with a decision of the city manager made pursuant to this chapter may file a written appeal to the city manager. The written appeal shall be filed on forms provided by the office of the city manager and shall clearly state what adjustments are being requested and the reason such adjustments are warranted, and shall be accompanied with such supplementary data as is deemed necessary to substantiate the requested adjustment. The city manager may approve, modify or deny the requested adjustment based upon the public interest, the intent of this chapter, and any unreasonable hardship likely to result. The city manager shall act on the appeal as expeditiously as possible and shall mail written notice of his decision to the appellant no later than ten (10) working days after the appeal is received.

b. **Appeal to City Council.** Within fourteen (14) days after notification of the decision, but not thereafter, any aggrieved person may appeal any decision of the city manager to the city council. This appeal shall be made on a form provided by and filed with the office of the city manager and may be first heard by the appropriate committee on the city council. The city council or city council committee may appoint a person or persons from the tree committee to hear the complaint and to report a recommended decision to the city council or city council committee. The appellant shall be notified of the time and place this appeal will be heard. The city council shall act on the appeal as expeditiously as possible and shall notify the appellant in writing no later than five (5) days after the final decision. (Ord. No.5922, x 1, 4-19-82)